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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board ("Board") held a General meeting on September 28, 2006, at the Hilton Los Angeles, Airport, Newport B Room, 5711 West Century Boulevard, California.

2. **ROLL CALL**

Alan J. Skobin, Vice President of the Board, called the General meeting to order at 9:06 a.m.

Present: Robert V. Branzuela William G. Brennan, Executive Director  
Ryan L. Brooks Howard Weinberg, General Counsel  
(departed approximately 12:30 p.m.)  
Robert T. (Tom) Flesh Robin P. Parker, Senior Staff Counsel  
Haig Papaian Polly Riggensbach, Staff Counsel  
Andy Robles (departed 11:10 am)  
Alan J. Skobin  
Glenn E. Stevens

Absent: David C. Lizárraga  
David W. Wilson

3. **APPROVAL OF THE MINUTES FROM THE JUNE 16, 2006, GENERAL MEETING**

Mr. Stevens moved to adopt the June 16, 2006, General Board meeting minutes. Mr. Brooks seconded the motion. The motion carried unanimously. Mr. Robles did not vote because he was not present at the meeting.

4. **ORAL ARGUMENTS BEFORE THE PUBLIC MEMBERS OF THE BOARD**

Mr. Stevens, Board Attorney Member, presided over Agenda items 4-6. The dealer members did not participate in these items because they involve a dispute between a franchisee and franchisor.

- a. SERPA AUTOMOTIVE GROUP, INC. v. VOLKSWAGEN OF AMERICA, INC.  
Protest No. PR-1977-05

Oral arguments were presented before the Public members of the Board. Michael J. Flanagan, Esq., of the Law Offices of Michael J. Flanagan, represented Protestant. Allen S. Resnick, Esq. of Jeffer, Mangels, Butler & Marmaro LLP represented Respondent.

- b. POMONA VALLEY KAWASAKI/KTM v. KTM NORTH AMERICA  
Protest No. PR-1978-05

No appearance was made on behalf of Protestant. Robert E. Davies, Esq. of Caulfield, Davies & Donahue LLP, represented Respondent.

- c. FRONTIER INFINITI v. NISSAN NORTH AMERICA, INC., INFINITI DIVISION  
Protest No. PR-1969-05

Oral arguments were presented before the Public members of the Board. Michael M. Sieving, Esq., of the Law Offices of Michael M. Sieving, represented Protestant. Marjorie E. Lewis, Esq., of Gibson, Dunn & Crutcher, LLP represented Respondent.

5. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board shall convene in a closed Executive Session to deliberate on the decisions to be reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

a. **CONSIDERATION OF PROPOSED DECISION**

SERPA AUTOMOTIVE GROUP, INC. v. VOLKSWAGEN OF AMERICA, INC.  
Protest No. PR-1977-05

Consideration of the Administrative Law Judge's Proposed Decision, by the Public members of the Board.

The Public members of the Board deliberated in closed Executive Session. Mr. Stevens moved to adopt the Administrative Law Judge's Proposed Decision. Mr. Papaian seconded the motion. The motion carried by a three-to-one vote with Mr. Brooks opposed.

b. **CONSIDERATION OF PROPOSED DECISION**

POMONA VALLEY KAWASAKI/KTM v. KTM NORTH AMERICA  
Protest No. PR-1978-05

Consideration of the Administrative Law Judge's Proposed Decision, by the Public members of the Board.

The Public members of the Board deliberated in closed Executive Session. Mr. Flesh moved to adopt the Administrative Law Judge's Proposed Decision. Mr. Brooks seconded the motion. The motion carried unanimously.

c. **CONSIDERATION OF RECOMMENDATION RE: PAYMENT OF ATTORNEY'S FEES**

FRONTIER INFINITI v. NISSAN NORTH AMERICA, INC., INFINITI DIVISION  
Protest No. PR-1969-05

Consideration of the Administrative Law Judge's "Recommendation Re: Payment of Attorney's Fees", by the Public members of the Board.

The Public members of the Board deliberated in closed Executive Session. Mr. Brooks moved to adopt the Administrative Law Judge's Recommendation that Protestant is ordered to pay Respondent's attorney's fees in the sum of \$11,694.37. Mr. Papaian seconded the motion. Mr. Flesh moved to amend the motion to include the following: "subject to the award being consistent with the attorneys' established billing rates." The motion carried by a three-to-one vote with Mr. Stevens opposed.

6. **OPEN SESSION**

The Public members returned to Open Session and Mr. Stevens announced the decisions in Agenda items 5(a), 5(b) and 5(c).

7. **ORAL ARGUMENTS BEFORE THE PUBLIC AND DEALER MEMBERS OF THE BOARD**

MEGA RV CORP., dba McMAHON'S RV v. WESTERN RECREATIONAL VEHICLES, INC.  
Protest No. PR-1983-05

Oral arguments were presented before the Public and Dealer members of the Board. Michael M. Sieving, Esq., of the Law Offices of Michael M. Sieving, represented Protestant. Bruce L. Ishimatsu, Esq., of Loeb & Loeb LLP, represented Respondent.

8. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board shall convene in a closed Executive Session to deliberate on the decisions to be reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

**CONSIDERATION OF PROPOSED ORDER**

MEGA RV CORP., dba McMAHON'S RV v. WESTERN RECREATIONAL VEHICLES, INC.

Protest No. PR-1983-05

Consideration of the Administrative Law Judge's "Proposed Order Granting 'Respondent's Motion to Dismiss for Lack of Subject Matter Jurisdiction'; and Proposed Order Dismissing Protest without Prejudice", by the Public and Dealer members of the Board.

The Public and Dealer members of the Board deliberated in closed Executive Session. Mr. Stevens moved to remand the Administrative Law Judge's Proposed Order for additional briefing from the parties concerning whether or not there are any exceptions to the written document requirements of Vehicle Code section 331 as it applies to the jurisdiction of the Board. Mr. Branzuela seconded the motion. The motion carried unanimously. [Mr. Brooks participated in the oral argument and closed Executive Session deliberations, however, he departed prior to a vote thereon.]

9. **OPEN SESSION**

Mr. Skobin announced the decision in Agenda item 8.

10. **ANNUAL UPDATE CONCERNING THE NUMBER OF MONTHLY HITS TO THE BOARD'S WEBSITE AND WHERE INFORMATION IS BEING SOUGHT - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Dawn Kindel concerning the annual report on user "hits" to the Board's website. Mr. Brennan reported that in last fiscal year, the website received a total of 638,760 hits, with an average of 1,749 hits per day.

11. **CONSIDERATION OF APPOINTMENT OF POLLY RIGGENBACH, STAFF COUNSEL, AS AN ADMINISTRATIVE LAW JUDGE FOR PURPOSES OF CONDUCTING MANDATORY SETTLEMENT CONFERENCES IN PROTEST PROCEEDINGS (13 CCR § 590) - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker. Mr. Flesh moved to appoint Ms. Riggensbach, Staff Counsel, an administrative law judge for purposes of conducting mandatory settlement conferences in protest proceedings. Mr. Stevens seconded the motion. The motion carried unanimously.

12. **STATUS ON THE NUMBER OF MANUFACTURERS AND DISTRIBUTORS THAT FAILED TO RESPOND TO THE BOARD'S REQUEST FOR DATA NECESSARY TO CALCULATE THE ANNUAL BOARD FEE - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan concerning the number of manufacturers and distributors that failed to respond to the Board's request for the data necessary to calculate the annual Board fee. Mr. Brennan reported that of the 13 companies that were invoiced the minimum \$225.00 annual Board fee due to their failure to provide the data summary form, eight companies were still delinquent.

13. **CONSIDERATION OF PROPOSED REVISIONS TO THE ASSIGNMENT OF CASES TO BOARD ADMINISTRATIVE LAW JUDGES - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Robin Parker concerning proposed revisions to the assignment of cases to Board administrative law judges. Ms. Parker indicated that the following recent changes necessitate consideration of the assignment of cases to Board ALJs:

- Judge Norman Greg Taylor is now available on a contract basis for an initial six-month term;
- Judge Marilyn Wong has expressed a willingness to function as the Board's Mandatory Settlement Conference ALJ;
- Polly Riggensbach's recent appointment as a Mandatory Settlement Conference ALJ for protest proceedings;
- Recently, scheduled merits hearings have been resolved after a Board ALJ was assigned.

The staff recommended that the revised Merits and MSC Judge Assignment Logs be adopted by the Board with Judges Archibald, Hagle, Prod, Lopez, and Taylor being assigned merits cases, and Judge Wong be assigned Mandatory Settlement Conferences. Ms. Riggensbach will mentor with Judge Wong and serve as an alternate settlement conference judge if Judge Wong is unavailable. Furthermore, if an ALJ is assigned to the merits and the case settles prior to commencement, that judge will be added back into the rotation. Lastly, if an ALJ is precluded from presiding over the merits because he or she was the settlement judge, he or she will be added back into the rotation.

Mr. Flesh moved to reject the staff recommendation. The MSC Judge Assignment Log would include all of the ALJs that wished to preside over mandatory settlement conferences including Judge Wong. Once Judge Riggensbach was trained, then she would be added to this log as well. Mr. Stevens seconded the motion. The motion carried unanimously.

14. **DISCUSSION AND CONSIDERATION OF THE FORMAT, ROOM SET-UP, AND DRAFT TOPICS FOR THE 6<sup>TH</sup> ANNUAL INDUSTRY ROUNDTABLE SCHEDULED FOR MARCH 27, 2007, IN SACRAMENTO - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

Due to time constraints, this matter was postponed until the November 17, 2006, General meeting.

15. **STATUS REPORT ON THE REGISTRATION FEES COLLECTED AT THE 5<sup>TH</sup> ANNUAL INDUSTRY ROUNDTABLE, HELD IN SACRAMENTO ON APRIL 4, 2006 - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

Due to time constraints, this matter was postponed until the November 17, 2006, General meeting.

16. **DISCUSSION CONCERNING PENDING LEGISLATION - POLICY AND PROCEDURE COMMITTEE**

- a. Pending Legislation that impacts the Board.
- b. Pending Legislation of general interest.
  - (1) Assembly Bill 1854 (Assembly Member Oropeza)
  - (2) Assembly Bill 2239 (Assembly Member Emmerson)
  - (3) Assembly Bill 2291 (Assembly Member Evans)
  - (4) Assembly Bill 2303 (Committee on Judiciary)
  - (5) Assembly Bill 2322 (Assembly Member Parra)
  - (6) Assembly Bill 2794 (Assembly Member Levine)
  - (7) Senate Bill 1542 (Senator Migden)
  - (8) Senate Bill 1559 (Senator Lowenthal) [Chaptered July 12, 2006]

The members were provided with a memorandum updating them on legislation. Ms. Parker indicated there are no bills that directly impact the Board. Ms. Parker reported that Assembly Bills 2239 and 2291, and Senate Bill 1542 were signed by the Governor and filed with the Secretary of State. At the time of the Board Meeting, Assembly Bill 2303 had not been signed by the Governor. This bill was subsequently signed by the Governor and filed with the Secretary of State. [There will be no further legislation reports until the March or April 2007, General Meeting.]

17. **EXECUTIVE DIRECTOR'S REPORT**

- a. Administrative Matters.
- b. Status of Protests.
- c. Status of Petitions.
- d. Status of Appeals.
- e. Judicial Review.
- f. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- g. Other.

Mr. Brennan briefly reported that the Board legal staff recently hosted an Administrative Law Judge Roundtable that was well-received.

Ms. Parker reported on case management. She indicated that one new Vehicle Code section 3065.1 protest was filed.

18. **ADJOURNMENT**

Mr. Flesh moved to adjourn the meeting. Mr. Stevens seconded the motion. The motion carried unanimously. With no further business to discuss, the meeting was adjourned at approximately 1:15 p.m.

Submitted by

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WILLIAM G. BRENNAN  
Executive Director

APPROVED: \_\_\_\_\_

David W. Wilson  
President  
New Motor Vehicle Board